

No. 21,520

United States Court of Appeals
For the Ninth Circuit

FRANK E. EALEY,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLANT'S PETITION FOR A REHEARING

FILED

SEP 5 1901

WM. B. LUCK, CLERK

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*Attorneys for Appellant
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SEP 18 1901

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To the Above Entitled Court:

Comes now appellant, Frank E. Ealey, and petitions the Court for rehearing herein:

1

That the above entitled Court rendered an order affirming judgment on August 15, 1967, and per curiam, stated: "The Court finds no reversible error in the record. The Judgment of conviction is affirmed."

III

That the sole ground upon which rehearing is requested is whether the trial Court committed prejudicial error by reversing its ruling on Counts III and IV of the indictment, submitting the same to the jury along with other counts in the indictment, contrary to FRCP 29. This issue, insofar as our research indicates, has never been ruled upon and to give guidance

to the trial Courts, the Government and defendants in criminal cases, this Court should reconsider its ruling as to whether ERCP 29 permits of the practice followed by the trial Court in the instant case.

Dated, Sacramento, California,
August 30, 1967.

O. W. GOKEY,
COLLEY AND McGHEE,
By MILTON L. McGHEE,
*Attorneys for Appellant
and Petitioner.*

CERTIFICATE OF COUNSEL

Pursuant to Rule 23, I, Milton L. McGhee, one of the attorneys of record herein for Appellant, hereby state:

That I am personally familiar with transcripts, records and documents on file herein and have heretofore personally handled the appeal of this case.

That in my judgment the ground on which petition for rehearing is requested is well founded and that this petition is not interposed for the purpose of delaying further proceedings herein.

I declare under penalty of perjury the foregoing is true and correct.

Dated, Sacramento, California,
August 30, 1967.

MILTON L. McGHEE.